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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-10

DAVID MOOR, *et al.*,

Petitioners,

vs.

COUNTY OF ALAMEDA, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

APPENDIX.

Chronological List of Relevant Docket Entries.*

February 12, 1970 —Plaintiffs' complaints filed in U.S. District Court for the Northern District of California

March 9, 1970 —Defendants' answers filed

August 18, 1970 —Defendant County of Alameda's motion to dismiss filed in *Rundle* case

*All entries noted apply in both the *Moor* and *Rundle* cases unless otherwise indicated.

September 14, 1970 —Defendant County of Alameda's motion to dismiss filed in *Moor* case

November 30, 1970 —Plaintiffs' opposition to defendant County of Alameda's motions to dismiss filed

March 31, 1971 —Order filed granting defendant County of Alameda's motion to dismiss in *Rundle* case and requesting further points and authorities in *Moor* case on diversity jurisdiction issue (Appendix D to petition for writ of certiorari)

April 9, 1971 —Defendant County of Alameda's further points and authorities in support of its motion to dismiss filed in *Moor* case

April 20, 1971 —Plaintiffs' further points and authorities in opposition to defendant County of Alameda's motion to dismiss filed in *Moor* case

April 23, 1971 —Plaintiffs' motion for reconsideration of order granting defendant County of Alameda's motion to dismiss filed in *Rundle* case

April 29, 1971 —Defendant County of Alameda's further points and authorities in support of its motion to dismiss filed in *Moor* case

May 10, 1971 —Defendant County of Alameda's opposition to plaintiffs' motion

to reconsider filed in *Rundle* case

May 18, 1971 —Plaintiffs' reply to defendant County of Alameda's opposition to plaintiffs' motion for reconsideration filed in *Rundle* case

August 25, 1971 —Order granting defendant County of Alameda's motion to dismiss filed in *Moor* case (Appendix E to petition for writ of certiorari)

August 30, 1971 —Order affirming prior order granting defendant County of Alameda's motion to dismiss filed in *Rundle* case (Appendix F to petition for writ of certiorari)

September 3, 1971 —Plaintiffs' requests for entry of final judgment as to less than all parties filed

September 7, 1971 —Orders dismissing defendant County of Alameda filed

September 20, 1971 —Judgment of District Court entered dismissing defendant County of Alameda in *Moor* case

September 22, 1971 —Judgment of District Court entered dismissing defendant County of Alameda in *Rundle* case

October 18, 1971 —Plaintiffs' notices of appeal filed

January 24, 1972 —Order of the Court of Appeals for the Ninth Circuit consolidating the appeals in the *Rundle* and *Moor* cases (Appendix C to petition for writ of certiorari)

April 12, 1972 —Opinion of the Court of Appeals for the Ninth Circuit affirming the orders of the District Court dismissing the defendant County of Alameda (Appendix A to petition for writ of certiorari)

April 24, 1972 —Petition for rehearing filed

May 30, 1972 —Order of the Court of Appeals for the Ninth Circuit denying plaintiffs-appellants' petition for rehearing and rejecting suggestion for rehearing en banc (Appendix B to petition for writ of certiorari)

Complaint for Deprivation of Civil Rights and for Personal Injuries.

United States District Court, Northern District of California.

David Moor, Plaintiff, v. Frank I. Madigan, Glen Dyer, Thomas L. Houchens, Louis Santucci, Lawrence L. Riche, and County of Alameda, Defendants. C-70 333 RFP.

Filed: Feb. 12, 1970.

Plaintiff alleges:

FIRST CAUSE OF ACTION

I.

This action arises under the United States Constitution, Amendment XIV, §1 and under 42 U.S.C. §§1981, 1983, 1985, 1986 and 1988, as hereinafter more fully appears. Jurisdiction is conferred on this court by 28 U.S.C. §§1332 and 1343.

II.

At all times mentioned herein plaintiff was, and now is, a citizen of the United States and of the State of Illinois. Plaintiff is informed and believes, and thereupon alleges, that each of the defendants is a citizen of the State of California. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

III.

At all times mentioned herein, defendant County of Alameda was a county and political subdivision of the State of California, duly organized and existing under the laws of the State of California, and has consented to be sued by virtue of the California Tort Claims Act of 1963 (Cal. Govt. Code §§810 et seq.).

IV.

Plaintiff is informed and believes and thereon alleges that at all times mentioned herein defendant Frank I. Madigan was the Sheriff of the defendant County of Alameda, and defendants Glen Dyer, Thomas L. Houchens, Louis Santucci, and Lawrence L. Riche were, and still are, Deputy Sheriffs for the defendant County of Alameda. In doing the things hereinafter described, each of the above named defendants acted within the course and scope of said employment, and each was the agent, servant and employee of each of their co-defendants. As such, their acts are imputed to the defendant County of Alameda.

V.

Prior to the commencement of this action, and on or about August 20, 1969, plaintiff caused to be served on defendant County of Alameda a claim for damages arising from the matters hereinafter set forth. Said claim was rejected by operation of law on October 6, 1969.

VI.

On or about May 15, 1969, the above-named individual defendants, and each of them, in doing all of the things hereinafter mentioned, acted under color of their authority as such and under color of the statutes, ordinances, regulations, customs and usages of the State of California, the County of Alameda, and the Sheriff's Department for the County of Alameda.

VII.

On or about May 15, 1969, in the State of California, defendants, and each of them, and certain other police officer personnel then subject to the command of defendant Frank I. Madigan, conspired together and maliciously and wilfully entered into a scheme to de-

prive persons who were lawfully upon the public streets in the City of Berkeley, County of Alameda, State of California, of rights, privileges and immunities secured to them by the United States Constitution and laws, and formed the deliberate design and purpose to declare otherwise lawful assembly and speech as riotous in order to allow defendants, and each of them, as well as said other police officer personnel, to indiscriminately shoot at and otherwise molest said persons.

VIII.

In pursuance of said conspiracy and scheme, defendant Lawrence L. Riche, on or about May 15, 1969, at approximately 3:45 p.m., intentionally, wilfully, and without cause or provocation, and without prior warning, fired a shotgun at plaintiff, at a time when plaintiff was lawfully upon the public street, namely the corner of Parker and Chilton Way, in the City of Berkeley, County of Alameda, State of California. Said conduct of said defendant was without justification, statutory or otherwise. Said defendant thereafter immediately departed from the scene of the shooting, without attempting to render any aid whatever to said plaintiff.

IX.

By reason of the premises and defendant's said conduct, plaintiff was deprived of rights, privileges and immunities secured to him by the United States Constitution and laws in that said shooting amounted to an arbitrary intrusion by said defendant into the security of plaintiff's person and was not authorized by law, and in that said contacts on plaintiff's person deprived plaintiff of life and liberty, without due process of law.

X.

As a direct and proximate result of said wrongful act by said defendant, plaintiff was injured in his health, strength and activity, sustained bodily injury, and shock and injury to his nervous system, and said injuries have caused, and continue to cause, him great mental and physical pain and suffering. Plaintiff is informed and believes, and thereon alleges, that said injuries will result in his permanent disability. By reason of the aforesaid, plaintiff is entitled to general damages in the sum of $100,000.

XI.

As a further direct and proximate result of said wrongful act and of the said injuries, plaintiff was required to, and did, employ physicians to examine, treat and care for him, and incurred medical and incidental expenses for such examination, treatment and care. The exact amount of such expenses is unknown to plaintiff at this time, and he will ask leave to amend this pleading to set forth said sums when the same have been ascertained.

XII.

By reason of the facts hereinabove alleged, plaintiff is entitled to punitive damages from defendants and each of them, except for the defendant County of Alameda, in the amount of $500,000.

SECOND CAUSE OF ACTION

XIII.

Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs I through VI, and IX through XII of the First Cause of Action.

XIV.

On or about May 15, 1969, at approximately 3:45 p.m., defendant Lawrence L. Riche intentionally, wilfully, maliciously, wrongfully, and without cause or provocation, and without prior warning, fired a shotgun at plaintiff at a time when plaintiff was lawfully upon the public street, namely the corner of Parker and Chilton Way, in the City of Berkeley, County of Alameda, State of California. Said conduct of said defendant was without justification, statutory or otherwise. Said defendant thereafter immediately departed from the scene of the shooting without attempting to render any aid whatever to said plaintiff.

THIRD CAUSE OF ACTION

XV.

Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs II through V and X through XII of the First Cause of Action, and paragraph XIV of the Second Cause of Action.

FOURTH CAUSE OF ACTION

XVI.

Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs II through V and X and XI of the First Cause of Action.

XVII.

On or about May 15, 1969, at approximately 3:45 p.m., defendant Lawrence L. Riche negligently and carelessly fired a shotgun at plaintiff at a time when plaintiff was lawfully upon the public street, namely the corner of Parker and Chilton Way, in the City of Berkeley, County of Alameda, State of California.

WHEREFORE, plaintiff prays for judgment against the defendants, and each of them, as follows:

1. General damages on the first, second, third and fourth causes of action against each of the defendants in the sum of $100,000.

2. Exemplary and punitive damages on the first, second and third causes of action against each of the defendants, except for the defendant County of Alameda, in the sum of $500,000.

3. A reasonable attorneys' fee on the first and second causes of action against each of the defendants.

4. All medical and incidental expenses according to proof on the first, second, third and fourth causes of action against each of the defendants.

5. For costs of suit incurred herein; and

6. For such other and further relief as this court may deem just and proper.

RICHARDS, WATSON & HEMMERLING

/s/ By Ronald M. Greenberg
Ronald M. Greenberg
Attorneys for Plaintiff

Answer to Complaint and Demand for a Jury Trial.

United States District Court, Northern District of California.

David Moor, Plaintiff, vs. Frank I. Madigan, Glen Dyer, Thomas L. Houchens, Louis Santucci, Lawrence L. Riche, and County of Alameda, Defendants. No. C-70 333-RFP.

Filed: March 9, 1970.

COME NOW COUNTY OF ALAMEDA, a body politic and a political subdivision of the State of California, FRANK I. MADIGAN, THOMAS L. HOUCHENS, GLEN DYER, LOUIS SANTUCCI and LAWRENCE L. RICHE, six of the defendants above named, and appearing for themselves alone and answering plaintiff's Complaint on file herein, admit, deny and allege as follows, to wit:

I

Answering Paragraph II of plaintiff's First Cause of Action, these answering defendants allege that they have no information or belief upon the subject sufficient to enable them to answer said paragraph, and basing their denial upon that ground, deny the allegations therein contained.

II

Answering Paragraphs I, VI, VII, VIII, IX, and XI, and each of them, these answering defendants deny each and every, all and singular, generally and specifically, the allegations contained in said pararaphs.

III

Answering Paragraph III, these answering defendants admit that at all times mentioned in the plaintiff's Com-

plaint, defendant COUNTY OF ALAMEDA was a body politic and political subdivision of the State of California, duly organized and existing under the laws of the State of California, and has consented to be sued pursuant to law by virtue of the California Tort Claims Act of 1963 (Cal. Govt. Code §§ 810 et seq.).

In all other respects save and except as hereinbefore admitted, these answering defendants deny the allegations contained in said Paragraph III.

IV

Answering Paragraph IV, these answering defendants admit that at all times mentioned in the plaintiff's Complaint, defendant FRANK I. MADIGAN was the Sheriff of the defendant COUNTY OF ALAMEDA. Further answering Paragraph IV, these answering defendants admit that defendants THOMAS L. HOUCHENS, GLEN DYER, LOUIS SANTUCCI and LAWRENCE L. RICHE were Deputy Sheriffs and civil defense disaster workers.

In all other respects save and except as hereinbefore admitted, these answering defendants deny the allegations contained in said Paragraph IV.

V

Answering Paragraph X and XII of said alleged cause of action, these answering defendants specifically deny the allegations therein contained; and further in this connection these answering defendants specifically deny that plaintiff has been damaged in the sum of $100,000.00 or $500,000.00, or in any other sum, or at all.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

ANSWERING THE SECOND ALLEGED CAUSE OF ACTION in plaintiff's Complaint contained, these answering defendants admit, deny and allege as follows:

I

Answering Paragraph XIII of said alleged cause of action, these answering defendants make the same answers thereto as they made to each and every paragraph of the alleged First Cause of Action contained in said complaint, and incorporates herein by reference their answers to said paragraphs with the same force and effect as though fully set forth herein.

II

Answering Paragraph XIV of said alleged cause of action, these answering defendants deny each and every, all and singular, generally and specifically, the allegations therein contained.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

ANSWERING THE THIRD ALLEGED CAUSE OF ACTION in plaintiff's complaint contained, these answering defendants admit, deny and allege as follows:

I

Answering Paragraph XV of said alleged cause of action, these answering defendants make the same answers thereto as they made to each and every paragraph of the alleged First Cause of Action contained in said complaint, and incorporates herein by reference their answers to said paragraphs with the same force and effect as though fully set forth herein. Further answering Paragraph XV of said alleged cause of action, these answering defendants make the same answers

thereto as they made to each and every paragraph of the alleged Second Cause of Action contained in said complaint, and incorporates herein by reference their answers to said paragraphs with the same force and effect as though fully set forth herein.

WHEREFORE, these answering defendants pray judgement as hereinafter set forth.

ANSWERING THE FOURTH ALLEGED CAUSE OF ACTION in plaintiff's Complaint contained, these answering defendants admit, deny, and allege as follows:

I

Answering Paragraph XVI of said alleged cause of action, these answering defendants make the same answers thereto as it made to each and every paragraph of the alleged First Cause of Action contained in said complaint, and incorporates herein by reference its answers to said paragraphs with the same force and effect as though fully set forth herein.

II

Answering Paragraph XVII of said alleged cause of action, these answering defendants deny each and every, all and singular, generally and specifically, the allegations therein contained.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A SECOND, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and each cause of action contained therein, these answering defendants allege that the complaint fails to state facts sufficient to constitute a cause of action against these answering defendants.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A THIRD, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and each cause of action contained therein, these answering defendants allege that plaintiff was himself guilty of carelessness and negligence in and about the matters and things set forth in each of the alleged causes of action contained in said complaint; that said carelessness and negligence on the part of plaintiff proximately caused and contributed to the happening of the incident or incidents in question and the resultant alleged injuries and/or damage to plaintiff, if any.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A FOURTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's complaint on file herein, and each cause of action contained therein, these answering defendants allege that plaintiff, prior to and at the time of the incident or incidents complained of, voluntarily assumed the risk of injury and damage, and that any damage suffered by plaintiff at all times herein mentioned was voluntarily assumed by said plaintiff.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A FIFTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's complaint on file herein, and each cause of action contained therein, these answering defendants allege that at all times mentioned herein, COUNTY OF ALA-

MEDA was a public entity; that FRANK I. MADIGAN was the Sheriff and director of civil defense of said County; that defendant deputy sheriffs were duly authorized peace officers and civil defense disaster workers employed by said County; that at all times herein mentioned, said FRANK I. MADIGAN and said deputy sheriffs were performing their duties in good faith and pursuant to the discretion vested in them to execute and enforce the law and in the suppression of riots.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A SIXTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's complaint on file herein, and each cause of action contained therein, these answering defendants allege that at all times mentioned in said complaint defendants acted in good faith and without malice and had reasonable cause to believe that plaintiff had committed a violation of the Penal Code of the State of California; that plaintiff's complaint, and each cause of action therein contained, is barred by the provisions of California Government Code §§820.6, 821, 821.6, 844.6, 845, 845.2 and 845.4.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A SEVENTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's complaint on file herein, and each cause of action contained therein, these answering defendants allege that to the extent that these answering defendants were involved in any of the matters alleged, which involvement is expressly denied, said acts were per-

formed to terminate or prevent a breach of the peace, riot, rout, affray or other crime in which it appeared that plaintiff was participating, assisting or about to participate or assist, and that such breach of the peace, riot, rout, affray or other crime was one which threatened death or serious bodily harm.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's complaint on file herein, and each cause of action contained therein, these answering defendants allege that plaintiff's complaint is barred by the provisions of California Penal Code §§835, 835(a) and 836.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A NINTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to each of the alleged causes of action contained in plaintiff's complaint on file herein, these answering defendants allege that plaintiff's complaint is barred by the provisions of California Civil Code §1714.5.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A TENTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to each of the alleged causes of action contained in plaintiff's complaint on file herein, these answering defendants allege that at all times mentioned in plaintiff's complaint the COUNTY OF ALAMEDA was a public entity in the State of California; that in the absence of

statute a public entity is not liable for injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person; that plaintiff's complaint is barred by the provisions of California Government Code §§815 (a)(b), 815.2 (a)(b), 815.4, 818, 818.2, 818.6, 820.2, 820.4, 820.8, 821.4 and 822.2, in that at all times mentioned in plaintiff's complaint public employees acting on behalf of the COUNTY OF ALAMEDA were exercising due care in the good faith execution or enforcement of law, and were acting pursuant to the discretion vested in them; that at all times mentioned in plaintiff's complaint plaintiff had knowledge, or by the exercise of reasonable care, should have had knowledge, that he was participating in a riot or would reasonably appear to be participating in a riot and that at all times mentioned in plaintiff's complaint only reasonable force was used in self defense and in defense of others by public employees acting on behalf of the COUNTY OF ALAMEDA.

WHEREFORE, these answering defendants pray that plaintiff take nothing by his complaint on file herein, and each cause of action contained therein, and that these answering defendants have and recover their costs of suit herein incurred, and to be incurred, and for such other and further relief as to the Court may seem proper in the premises.

Dated: March 6, 1970.

RICHARD J. MOORE, County Counsel
CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION
/s/ By Peter W. Davis
PETER W. DAVIS,
Attorneys for defendants

DEMAND FOR A JURY TRIAL

The defendants, COUNTY OF ALAMEDA, GLEN DYER, LOUIS SANTUCCI, LAWRENCE L. RICHE, THOMAS L. HOUCHENS and FRANK I. MADIGAN, hereby demand a trial by jury in the above entitled action.

Dated: March 6, 1970.

RICHARD J. MOORE, County Counsel
CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

/s/ By Peter W. Davis
PETER W. DAVIS
Attorneys for defendants

Order.

In the United States District Court, for the Northern District of California.

David Moor, Plaintiff, vs. Frank I. Madigan, et al., Defendants. No. C-70 333 RFP.

Filed: Sept. 7, 1971.

Defendant COUNTY OF ALAMEDA, a body politic and a political subdivision of the State of California, having moved for an order for dismissal pursuant to Rule 12; the matter having been fully briefed and argued; and the Court having granted said motion for dismissal by its memorandum decision of August 25, 1971, the Clerk of this Court shall enter a final judgment upon the order dismissing defendant COUNTY OF ALAMEDA, a body politic and a political subdivision of the State of California, from plaintiff's first, second, third and fourth causes of action, and each of them, and the undersigned expressly determines that there is no just reason for delay in the entry of final judgment on this order.

Dated: September 3, 1971.

/s/ Robert Peckham
United States District Judge

Judgment.

In the United States District Court, for the Northern District of California.

David Moor, Plaintiff, vs. Frank I. Madigan, et al., Defendants. No. C-70 333-RFP.

Filed: Sept. 20, 1971.

An Order having been entered herein on September 3, 1971 for the dismissal of plaintiff's complaint against the COUNTY OF ALAMEDA, and the Court having certified therein that there was no just reason for delay, and expressly directing the entry of final judgment, it is

ADJUDGED, that the complaint be and the same hereby is dismissed as to the defendant COUNTY OF ALAMEDA.

DATED: Sept. 20, 1971.

/s/ Robert Peckham
U.S. District Judge

Complaint for Deprivation of Civil Rights and for Personal Injuries.

United States District Court, Northern District of California.

William Donovan Rundle, Jr., a minor, by William D. Rundle, his guardian ad litem; William D. Rundle and Sarah Rundle, Plaintiffs, v. Frank I. Madigan; Glen Dyer; Thomas L. Houchens; Louis Santucci, Lawrence L. Riche; and County of Alameda, Defendants. C-70 334 GBH.

Filed: Feb. 12, 1972.

Plaintiffs allege:

FIRST CAUSE OF ACTION

I.

This action arises under the United States Constitution, Amendment XIV, §1 and under 42 U.S.C. §§1981, 1983, 1985, 1986 and 1988, as hereinafter more fully appears. Jurisdiction is conferred on this court by 28 U.S.C. §1343.

II.

At all times mentioned herein plaintiffs were, and now are, citizens of the United States and of the State of California. For purposes of this action William D. Rundle was appointed by the above-entitled court, and now is, the guardian ad litem of plaintiff William Donovan Rundle, Jr., a minor.

III.

At all times mentioned herein, defendant County of Alameda was a county and political subdivision of the State of California, duly organized and existing under the laws of the State of California, and has con-

sented to be sued by virtue of the California Tort Claims Act of 1963 (Cal. Govt. Code §§810 et seq.).

IV.

Plaintiffs are informed and believe and thereon allege that at all times mentioned herein defendant Frank I. Madigan was the Sheriff of the defendant County of Alameda, and defendants Glen Dyer, Thomas L. Houchens, Louis Santucci and Lawrence L. Riche were Deputy Sheriffs for the defendant County of Alameda. In doing the things hereinafter described, each of the above named defendants acted within the course and scope of said employment, and each was the agent, servant and employee of each of their co-defendants. As such, their acts are imputed to the defendant County of Alameda.

V.

Prior to the commencement of this action, and on or about August 22, 1969, plaintiffs caused to be served on defendant County of Alameda a claim for damages arising from the matters hereinafter set forth. Said claim was rejected by operation of law on October 6, 1969.

VI.

On or about May 15, 1969, the above named individual defendants, and each of them, in doing all of the things hereinafter mentioned, acted under color of their authority as such and under color of the statutes, ordinances, regulations, customs and usages of the State of California, the County of Alameda, and the Sheriff's Department for the County of Alameda.

VII.

On or about May 15, 1969, in the State of California, defendants, and each of them, and certain other

police officer personnel then subject to the command of defendant Frank I. Madigan, conspired together and maliciously and wilfully entered into a scheme to deprive persons who were lawfully upon the public streets in the City of Berkeley, County of Alameda, State of California, of rights, privileges and immunities secured to them by the United States Constitution and laws, and formed the deliberate design and purpose to declare otherwise lawful assembly and speech as riotous in order to allow defendants, and each of them, as well as said other police officer personnel, to indiscriminately shoot at and otherwise molest said persons.

VIII.

In pursuance of said conspiracy and scheme, defendant Lawrence L. Riche, on or about May 15, 1969, at approximately 3:45 p.m., intentionally, wilfully, and without cause or provocation, and without prior warning, fired a shotgun at plaintiff William Donovan Rundle, Jr., at a time when said plaintiff was lawfully upon the public street, namely the corner of Parker and Chilton Way, in the City of Berkeley, County of Alameda, State of California. Said conduct of said defendant was without justification, statutory or otherwise. Said defendant thereafter immediately departed from the scene of the shooting, without attempting to render any aid whatever to said plaintiff.

IX.

By reason of the premises and defendant's said conduct, plaintiff William Donovan Rundle, Jr. was deprived of rights, privileges and immunities secured to him by the United States Constitution and laws in that said shooting amounted to an arbitrary intrusion by said defendant into the security of plaintiff's person

and was not authorized by law, and in that said contacts on plaintiff's person deprived said plaintiff of life and liberty without due process of law.

X.

As a direct and proximate result of said wrongful act by said defendant, plaintiff William Donovan Rundle, Jr. was injured in his health, strength and activity, sustained bodily injury, and shock and injury to his nervous system, and said injuries have caused, and continue to cause, him great mental and physical pain and suffering. Said plaintiff is informed and believes, and thereon alleges, that said injuries will result in his permanent disability. By reason of the aforesaid, plaintiff is entitled to general damages in the sum of $500,000.

XI.

As a further direct and proximate result of said wrongful act and of the said injuries, said plaintiff's parents, plaintiffs William D. Rundle and Sarah Rundle were required to, and did, employ physicians to examine, treat and care for him, and incurred medical and incidental expenses for such examination, treatment and care. The exact amount of such expenses is unknown to plaintiffs at this time, and they will ask leave to amend this pleading to set forth said sums when the same have been ascertained.

XII.

By reason of the facts hereinabove alleged, plaintiff William Donovan Rundle, Jr. is entitled to punitive damages from the defendants, and each of them, except for the defendant County of Alameda, in the amount of $500,000.

SECOND CAUSE OF ACTION

XIII.

Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs I through VI, and IX through XII of the First Cause of Action.

XIV.

On or about May 15, 1969, at approximately 3:45 p.m., defendant Lawrence L. Riche intentionally, wilfully, maliciously, wrongfully, and without cause or provocation, and without prior warning, fired a shotgun at plaintiff William Donovan Rundle, Jr. at a time when said plaintiff was lawfully upon the public street, namely the corner of Parker and Chilton Way, in the City of Berkeley, County of Alameda, State of California. Said conduct of said defendant was without justification, statutory or otherwise. Said defendant thereafter immediately departed from the scene of the shooting, without attempting to render any aid whatever to said plaintiff.

THIRD CAUSE OF ACTION

XV.

Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs II through V and X through XII of the First Cause of Action and paragraph XIV of the Second Cause of Action.

FOURTH CAUSE OF ACTION

XVI.

Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs II through V and X and XI of the First Cause of Action.

XVII.

On or about May 15, 1969, at approximately 3:45 p.m., defendant Lawrence L. Riche negligently and carelessly fired a shotgun at plaintiff William Donovan Rundle, Jr. at a time when said plaintiff was lawfully upon the public street, namely the corner of Parker and Chilton Way, in the City of Berkeley, County of Alameda, State of California.

WHEREFORE, plaintiffs pray for judgment against the defendants, and each of them, as follows:

Plaintiff William Donovan Rundle, Jr.:

1. General damages on the first, second, third and fourth causes of action against each of the defendants in the sum of $500,000.

2. Exemplary and punitive damages on the first, second and third causes of action against each of the defendants, except for the defendant County of Alameda, in the sum of $500,000.

3. A reasonable attorneys' fee on the first and second causes of action against each of the defendants.

Plaintiffs William D. Rundle and Sarah Rundle:

4. All medical and incidental expenses according to proof on the first, second, third and fourth causes of action against each of the defendants.

All plaintiffs:

5. For costs of suit incurred herein; and

6. For such other and further relief as this court may deem just and proper.

RICHARDS, WATSON & HEMMERLING

/s/ By Ronald M. Greenberg

Ronald M. Greenberg

Attorneys for Plaintiffs

Answer to Complaint and Demand for a Jury Trial.

United States District Court, Northern District of California.

William Donovan Rundle, Jr., a minor, by William D. Rundle, his guardian ad litem; William D. Rundle and Sarah Rundle, Plaintiffs, vs. Frank I. Madigan, Glen Dyer, Thomas L. Houchens, Louis Santucci, Lawrence L. Riche, and County of Alameda, Defendants. No. C-70 334-GBH.

Filed: March 9, 1970.

COME NOW COUNTY OF ALAMEDA, a body politic and a political subdivision of the State of California, FRANK I. MADIGAN, THOMAS L. HOUCHENS, GLEN DYER, LOUIS SANTUCCI and LAWRENCE L. RICHIE. six of the defendants above named, and appearing for themselves alone and answering plaintiffs' Complaint on file herein, admit, deny and allege as follows, to wit:

I

Answering Paragraph II of plaintiffs' First Cause of Action, these answering defendants allege that they have no information or belief upon the subject sufficient to enable them to answer said paragraph, and basing their denial upon that ground, deny the allegations therein contained.

II

Answering Paragraphs I, VI, VII, VIII, IX and XI, and each of them, these answering defendants deny each and every, all and singular, generally and specifically, the allegations contained in said paragraphs.

III

Answering Paragraph III, these answering defendants admit that at all times mentioned in the plaintiffs' Com-

plaint, defendant COUNTY OF ALAMEDA was a body politic and political subdivision of the State of California, duly organized and existing under the laws of the State of California, and has consented to be sued pursuant to law by virtue of the California Tort Claims Act of 1963 (Cal. Govt. Code §§ 810 et seq.).

In all other respects save and except as hereinbefore admitted, these answering defendants deny the allegations contained in said Paragraph III.

IV

Answering Paragraph IV, these answering defendants admit that at all times mentioned in the plaintiffs' Complaint, defendant FRANK I. MADIGAN was the Sheriff of the defendant COUNTY OF ALAMEDA. Further answering Paragraph IV, these answering defendants admit that defendants THOMAS L. HOUCHENS, GLEN DYER, LOUIS SANTUCCI and LAWRENCE L. RICHE were Deputy Sheriffs and civil defense disaster workers.

In all other respects save and except as hereinbefore admitted, these answering defendants deny the allegations contained in said Paragraph IV.

V

Answering Paragraph X and XII of said alleged cause of action, these answering defendants specifically deny the allegations therein contained; and further in this connection these answering defendants specifically deny that plaintiff has been damaged in the sum of $500,000 or in any other sum, or at all.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

ANSWERING THE SECOND ALLEGED CAUSE OF ACTION IN plaintiffs' Complaint contained, these answering defendants admit, deny and allege as follows:

I

Answering Paragraph XIII of said alleged cause of action, these answering defendants make the same answers thereto as they made to each and every paragraph of the alleged First Cause of Action contained in said complaint, and incorporates herein by reference their answers to said paragraphs with the same force and effect as though fully set forth herein.

II

Answering Paragraph XIV of said alleged cause of action, these ansering defendants deny each and every, all and singular, generally and specifically, the allegations therein contained.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

ANSWERING THE THIRD ALLEGED CAUSE OF ACTION in plaintiffs' complaint contained, these answering defendants admit, deny and allege as follows:

I

Answering Paragraph XV of said alleged cause of action, these answering defendants make the same answers thereto as they made to each and every paragraph of the alleged First Cause of Action contained in said complaint, and incorporates herein by reference their answers to said paragraphs with the same force and effect as though fully set forth herein. Further answering Paragraph XV of said alleged cause of action, these answering defendants make the same answers

thereto as they made to each and every paragraph of the alleged Second Cause of Action contained in said complaint, and incorporates herein by reference their answers to said paragraphs with the same force and effect as though fully set forth herein.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

ANSWERING THE FOURTH ALLEGED CAUSE OF ACTION in plaintiffs' complaint contained, these answering defendants admit, deny, and allege as follows:

I

Answering Paragraph XVI of said alleged cause of action, these answering defendants make the same answers thereto as it made to each and every paragraph of the alleged First Cause of Action contained in said complaint, and incorporate herein by reference its answers to said paragraphs with the same force and effect as though fully set forth herein.

II

Answering Paragraph XVII of said alleged cause of action, these answering defendants deny each and every, all and singular, generally and specifically, the allegations therein contained.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A SECOND, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that the complaint fails to state facts sufficient to constitute a cause of action against these answering defendants.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A THIRD, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that plaintiffs were themselves guilty of carelessness and negligence in and about the matters and things set forth in each of the alleged causes of action contained in said complaint; that said carelessness and negligence on the part of plaintiffs proximately caused and contributed to the happening of the incident or incidents in question and the resultant alleged injuries or damage to plaintiffs, if any.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A FOURTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that plaintiffs, prior to and at the time of the incident or incidents complained of, voluntarily assumed the risk of injury and damage, and that any damage suffered by plaintiffs at all times herein mentioned was voluntarily assumed by said plaintiffs.

WHEREFORE, these answering defendents pray judgment as hereinafter set forth.

AND, AS AND FOR A FIFTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that at all times mentioned herein, COUNTY OF ALAMEDA was a public entity; that FRANK I. MADI-

GAN was the Sheriff and director of civil defense of said County; that defendant deputy sheriffs were duly authorized peace officers and civil defense disaster workers employed by said County; that at all times herein mentioned, said FRANK I. MADIGAN and said deputy sheriffs were performing their duties in good faith and pursuant to the discretion vested in them to execute and enforce the law and in the suppression of riots.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A SIXTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that at all times mentioned in said complaint defendants acted in good faith and without malice and had reasonable cause to believe that plaintiffs had committed a violation of the Penal Code of the State of California; that plaintiffs' complaint, and each cause of action therein contained, is barred by the provisions of California Government Code §§820.6, 821, 821.6, 844.6, 845, 845.2 and 845.4.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A SEVENTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that to the extent that these answering defendants were involved in any of the matters alleged, which involvement is expressly denied, said acts were performed to terminate or prevent a breach of the peace, riot, rout,

affray or other crime in which it appeared that plaintiffs were participating, assisting or about to participate or assist, and that such breach of the peace, riot, rout, affray or other crime was one which threatened death or serious bodily harm.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiffs' complaint on file herein, and each cause of action contained therein, these answering defendants allege that plaintiffs' complaint is barred by the provisions of California Penal Code §§835, 835(a) and 836.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A NINTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to each of the alleged causes of action contained in plaintiffs' complaint on file herein, these answering defendants allege that plaintiffs' complaint is barred by the provisions of California Civil Code §1714.5.

WHEREFORE, these answering defendants pray judgment as hereinafter set forth.

AND, AS AND FOR A TENTH, SEPARATE AND DISTINCT ANSWER AND DEFENSE to each of the alleged causes of action contained in plaintiffs' complaint on file herein, these answering defendants allege that at all times mentioned in plaintiffs' complaint the COUNTY OF ALAMEDA was a public entity in the State of California; that in the absence of statute a public entity is not liable for injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person;

that plaintiffs' Complaint is barred by the provisions of California Government Code §§815 (a)(b), 815.2 (a)(b), 815.4, 818, 818.2, 818.6, 820.2, 820.4, 820.8, 821.4 and 822.2, in that at all times mentioned in plaintiffs' complaint public employees acting on behalf of the COUNTY OF ALAMEDA were exercising due care in the good faith execution or enforcement of law, and were acting pursuant to the discretion vested in them; that at all times mentioned in plaintiffs' complaint plaintiffs had knowledge, or by the exercise of reasonable care, should have had knowledge, that they were participating in a riot or would reasonably appear to be participating in a riot and that at all times mentioned in plaintiffs' complaint only reasonable force was used in self defense and in defense of others by public employees acting on behalf of the COUNTY OF ALAMEDA.

WHEREFORE, these answering defendants pray that plaintiffs take nothing by their complaint on file herein, and each cause of action contained therein, and that these answering defendants have and recover their costs of suit herein incurred, and to be incurred, and for such other and further relief as to the Court may seem proper in the premises.

Dated: March 6, 1970.

RICHARD J. MOORE, County Counsel
CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

/s/ By Peter W. Davis
PETER W. DAVIS
Attorneys for defendants

DEMAND FOR A JURY TRIAL

The defendants, COUNTY OF ALAMEDA, GLEN DYER, LOUIS SANTUCCI, LAWRENCE L. RICHE, THOMAS L. HOUCHENS and FRANK I. MADIGAN, hereby demand a trial by jury in the above entitled action.

Dated: March 6, 1970.

RICHARD J. MOORE, County Counsel
CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

/s/By Peter W. Davis
PETER W. DAVIS,
Attorneys for defendants

Order.

In the United States District Court, for the Northern District of California.

William Donovan Rundle, Jr., et al., Plaintiffs, vs. Frank I. Madigan, et al., Defendants. No. C-70 334 RFP.

FILED: Sept. 7, 1971.

Defendant COUNTY OF ALAMEDA, a body politic and a political subdivision of the State of California, having moved for an order for dismissal pursuant to Rule 12; the matter having been fully briefed and argued; and the Court having granted said motion for dismissal by its memorandum decision of August 25, 1971, [March 31, 1971 and August 30, 1971], the Clerk of this Court shall enter a final judgment upon the order dismissing defendant COUNTY OF ALAMEDA, a body politic and a political subdivision of the State of California, from plaintiffs' first, second, third and fourth causes of action, and each of them, and the undersigned expressly determines that there is no just reason for delay in the entry of final judgment on this order.

Dated: September 3, 1971.

/s/ Robert Peckham

United States District Judge

Judgment.

In the United States District Court, for the Northern District of California.

William Donovan Rundle, Jr., etc., et al., Plaintiffs, vs. Frank I. Madigan, et al., Defendants. No. C-70 334-RFP.

FILED: Sept. 20, 1971.

An Order having been entered herein on September 3, 1971 for the dismissal of plaintiffs' complaint against the COUNTY OF ALAMEDA, and the Court having certified therein that there was no just reason for delay, and expressly directing the entry of final judgment, it is

ADJUDGED, that the complaint be and the same hereby is dismissed as to the defendant COUNTY OF ALAMEDA.

DATED: Sept. 20, 1971.

/s/ Robert Peckham

U.S. District Judge